

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

FILED BY SP D.C.  
05 OCT -5 AM 8:53  
CLERK U.S. DISTRICT COURT  
W.D. OF TN, JACKSON

WARREN OIL COMPANY, INC., )

Plaintiff, )

VS. )

No. 05-1158-T/An

NUOIL, INC. and RICKY SOWDER, )

Defendants. )

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ORDER DENYING MOTION FOR ENTRY OF DEFAULT JUDGMENT

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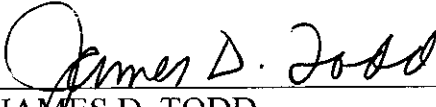

The plaintiff, Warren Oil Company, Inc., has filed a motion for entry of default judgment against defendants Nuoil, Inc. and Ricky Sowder. The motion must be denied, as plaintiff has failed to obtain the entry of default by the Clerk of Court.

Rule 55 of the Federal Rules of Civil Procedure governs defaults and default judgments. Section (a) of Rule 55 deals with entry of a default by the Clerk, and section (b) deals with entry of a default judgment, either by the Clerk or by the Court itself. Entry of a "formal" or "technical" default under section (a) is different from, and must precede, entry of a default judgment under section (b). See Arango v. Guzman Travel Advisors, 761 F.2d 1527, 1530 (11th Cir.), *cert. denied*, 474 U.S. 995 (1985); Atlanta Gas Light Co. v. Semaphore Adver., Inc., 747 F. Supp. 715, 718 (S.D. Ga. 1990). Entry of a default by the Clerk is the "first procedural step on the road to obtaining a default judgment," and must be

obtained before a default judgment may be granted. Shepard Claims Serv., Inc. v. William Darrah & Assoc., 796 F.2d 190, 193 (6th Cir. 1986); see also United Coin Meter Co. v. Seaboard Coastline R.R., 705 F.2d 839, 844 (6th Cir. 1983); United States v. 8771 Lake Road, 818 F. Supp. 199, 201 (W.D. Mich. 1992) (default encompasses two steps: first, entry of default and then a subsequent default judgment); Piercey v. Miami Valley Ready-Mixed Pension Plan, 110 F.R.D. 294, 296-97 (S.D. Ohio 1986).

In order to obtain the entry of default under Rule 55(a), an application for entry of default should be filed with the Clerk, along with an affidavit or other competent proof of the defendant's failure to plead or otherwise defend the action. The Clerk will examine the application and, if the requirements of Rule 55(a) are met, certify that the defendant is in default. Then the plaintiff may file a motion for default judgment, accompanied by the Clerk's certificate of default. Since plaintiff has not obtained the entry of default by the Clerk, the motion for a default judgment is premature. Therefore, the motion for default judgment is DENIED.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE  
  
\_\_\_\_\_  
DATE



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Anthony J. Biller  
COATS & BENNETT, PLLC  
1400 Crescent Green  
Ste. 300  
Cary, NC 27511

Rebecca E. Crandall  
COATS & BENNETT, PLLC  
1400 Crescent Green  
Ste. 300  
Cary, NC 27511

Larry L. Coats  
COATS & BENNETT, PLLC  
1400 Crescent Green  
St. 300  
Cary, NC 27511

Mary Katherine Hovious  
BASS BERRY & SIMS PLC- Memphis  
100 Peabody Place  
Ste. 900  
Memphis, TN 38103

John S. Golwen  
BASS BERRY & SIMS PLC- Memphis  
100 Peabody Place  
Ste. 900  
Memphis, TN 38103

Honorable James Todd  
US DISTRICT COURT